

## RESOLUTION 2015-021

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN NORTHEAST HIGHWAY 90-92 LIMITED PARTNERSHIP DEVELOPING MATTRESS FIRM AND THE CITY OF SIERRA VISTA; AUTHORIZING AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY, OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, pursuant to several policies and laws of the City of Sierra Vista, an agreement was negotiated which assured the mutual benefit of the Owner and the City of Sierra Vista; and

WHEREAS, it will be in the best interest of the public and Owner to permit Owner to develop the site, in accordance with standards as specified in the attached agreement; and

WHEREAS, by reason thereof, the parties hereto desire to approve said Development Agreement to permit the Owner Northeast Highway 90-92 Limited Partnership, to construct all necessary improvements on the site, in accordance with the standards as specified in the attached agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA AS FOLLOWS:

### SECTION 1

The policy of the City of Sierra Vista relating to development agreements, be, and hereby is, reaffirmed.


### SECTION 2

The Mayor and City Clerk are hereby authorized and directed to execute the Development Agreement for Parcel 107-16-044, attached hereto and made a part hereof by this reference.

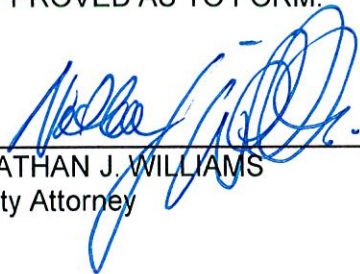
### SECTION 3

The City Manager, City Clerk, City Attorney, or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this resolution.


PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY  
OF SIERRA VISTA, ARIZONA, THIS 12<sup>TH</sup> DAY OF MARCH 2015.

  
\_\_\_\_\_  
FREDERICK W. MUELLER  
Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
NATHAN J. WILLIAMS  
City Attorney

ATTEST:

  
\_\_\_\_\_  
JILL ADAMS  
City Clerk

PREPARED BY:  
Tina Moore, Planner II

**DEVELOPMENT AGREEMENT WITH**  
**Mattress Firm**

This Development Agreement (hereinafter referred to as Agreement) is made and entered into this 12<sup>th</sup> day of March 2015, by and between the CITY OF SIERRA VISTA, a municipal corporation organized under the laws of the State of Arizona (hereinafter referred to as City) and Thomas Naifeh, President, of Christopher-Jude Inc. the managing member of Northeast 90-92 Limited Partnership (hereinafter referred to as the Owner) owner of Parcel Numbers 107-16-044, also known as Mattress Firm.

**PART I. WITNESSETH AND SPECIAL CONDITIONS**

WHEREAS, Owner owns certain real property contemplated for development within the corporate limits of the City described in Exhibit A attached hereto; and

WHEREAS, City is desirous of further guiding and coordinating its development consistent with the Goals and Policies set forth in City's adopted General Development Plan, VISTA 2030, and subsequent land use plans or amendments; and

WHEREAS, City and Owner desire to clearly and specifically set forth respective obligations of the City and Owner pertaining to the future development of the Owner's site and other matters; and

WHEREAS, City, after due and careful consideration, has concluded that the development of the Owner's site, under the terms and conditions hereinafter set forth, all as provided by law, would further enable the City to benefit from the development, ensure orderly development, and would best serve the interests of the City.

NOW, THEREFORE, for and in consideration of the promises, mutual covenants, conditions, terms, and agreements hereinafter set forth, the parties do hereby agree as follows:

City agrees to permit future development of the Owner's site, in accordance with the City codes, and according to the following special conditions:

1. The City agrees to reduce the side yard setback from 20 feet to 15 feet.
2. The owner agrees to provide additional pedestrian features as per the attached site plan (Exhibit B).

## **PART II. MISCELLANEOUS PROVISIONS**

1. This Agreement sets forth the entire understanding between the parties concerning the subject matter of this Agreement and incorporates all prior negotiations and understandings.
2. There are no covenants, promises, agreements, conditions, or understandings, either oral or written, between the parties relating to the subject matter of this Agreement other than those set forth herein. No modification or amendment of this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.
3. The Owner shall indemnify, protect, defend, and hold harmless the City, its Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, all costs and cleanup actions of any kind, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense, directly or indirectly, in whole or in part, arising out of this Agreement except for negligent acts of the City.
4. Notwithstanding the provisions of Part I above, in the event the City is required to enact, take action, apply, or bind any future land use ordinances, rules, regulations, permit requirements and other requirements, and official policies of the City enacted as necessary to comply with mandatory requirements imposed on the City by county, state, or federal laws and regulations, court decisions, and other similar superior external authorities beyond the control of the City, provided that in the event any such mandatory requirement prevents or precludes compliance with this Agreement, if permitted by law, such affected provision of this Agreement shall be modified as may be necessary to achieve minimum permissible compliance with such mandatory requirements.
5. The laws of the State of Arizona shall govern this Agreement and, in the event of litigation, venue shall be in Cochise County, Arizona.
6. In the event a party initiates action to enforce its rights hereunder, the substantially prevailing party shall recover from the non-prevailing party its expenses, court and/or arbitration costs, including taxed and untaxed costs, and reasonable attorneys' fees.
7. Time shall be of the essence for all performance required hereunder.
8. Notwithstanding the foregoing, if a dispute arises out of or relates to the Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree to first try to settle the dispute through mediation before resorting to arbitration, litigation, or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, either party may request the

presiding judge of the Superior Court of Cochise County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

9. The fee for this Development Agreement shall be waived.

### **PART III. SUCCESSORS AND ASSIGNS**

All the provisions hereof shall inure to the benefit of and be binding upon the parties hereto as applied to Parcel Number 107-16-044, and its respective successors and assigns unless otherwise specified in this Agreement.

### **PART IV. NOTICES**

Any notice required pursuant to the provisions of this Agreement shall be in writing and be sent by certified mail to the following addresses until notice of change of address is given and shall be deemed received on the fifth business day following deposit in the United States Mail.

City Clerk	Thomas Naifeh, President
City of Sierra Vista	Christophoner- Jude, Inc.
1011 N. Coronado Drive	5745 N. Piedra Seca
Sierra Vista, AZ 85635	Tucson, AZ 85718
85718	

### **PART V. NON-COLLUSION AND NO JOINT VENTURE**

1. Owner warrants that to its knowledge no other person or entity has been an employee or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingency and that no member of the Council or employee of the City has any interest, financially or otherwise, in Owner or its subcontractors. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability.
2. **This Agreement is not intended to be, and shall not be construed as, a joint venture, partnership, or other business entity created by and between the parties, and neither party is an agent for the other for any purpose nor has the power to bind the other for any purpose.**
3. No member, official, employee or agent of the City shall be personally liable to Owner, or any successor or assignee, (a) in the event of any default or breach

by the City, (b) for any amount which may become due to the Owner or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

#### **PART VI. SEVERABILITY**

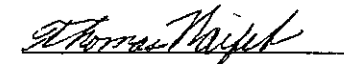
1. Nothing in this Agreement shall be deemed to be a promise or representation by Owner to construct, open, or operate the project; provided however, that in the event that Owner fails to complete the construction of the project, that this Agreement shall automatically terminate and the parties shall have no further obligation or liability to one another.
2. Should any section, clause or provision of this Agreement be declared by the courts to be invalid, it shall not invalidate the other provisions of this Agreement

IN WITNESS WHEREOF, THE City and Owners caused this instrument to be executed by their respective proper officials duly authorized to execute the same on the day and year first above written. DATED this 12<sup>th</sup> day of March, 2015.

**CITY OF SIERRA VISTA**

**Name**

By:   
FREDERICK MUELLER, MAYOR


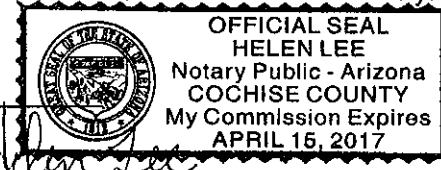
By:   
Name - THOMAS NAIFEH

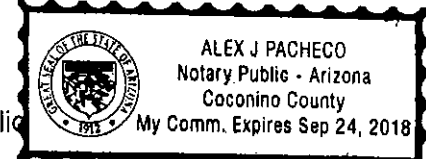
STATE OF ARIZONA )  
 ) ss  
County of Cochise )  
Cochise )

STATE OF ARIZONA )  
 ) ss  
County of COCONINO

This instrument was acknowledged before me  
before me this 17<sup>th</sup> ~~day of~~  
day of March, 2015,  
by: Frederick Mueller

This instrument was acknowledged  
, 2015, this  
5<sup>th</sup> DAY OF MARCH, 2015  
by: Alex Pacheco

Notary Public   


Notary Public 

My commission expires: April 15, 2017

My commission expires: 9.24.18

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**APPROVAL AS TO FORM:**

By:

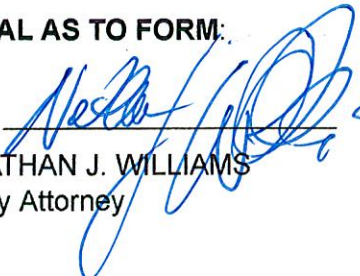
  
NATHAN J. WILLIAMS  
City Attorney





EXHIBIT A: LOCATION MAP

